

Amendment and Response

Applicant: William E. Sloan et al.

Serial No.: 09/997,771

Filing Date: November 29, 2001

Docket: G180.146.101

Title: BAKEABLE MUFFIN PAN, AND USE THEREOF

REMARKS

The following remarks are made in response to the Office Action mailed June 3, 2004. In that Office Action, the Examiner corrected document dates and names on Form PTO 1449 prior to initialing the Form, which is noted with appreciation.

In addition, the Examiner has provisionally rejected claims 1-9 and 12-14 under 35 U.S.C. §101 as claiming the same invention as claims 1-14 of co-pending U.S. Patent Application, Serial No. 10/433,537. Claims 1-6, and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over an Applicant's admission in view of Hale, U.S. Patent No. 3,197,058 ("Hale"). Claims 1-4, 6, and 8-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schwartz, U.S. Patent No. 3,191,796 ("Schwartz"). Claim 16 was rejected under 35 U.S.C. §103(a) as being unpatentable over Schwartz as applied to claims 1-4, 6, and 8-15 above, and further in view of Lau, Jr., et al., U.S. Patent No. 3,638,827 ("Lau"). Claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over an Applicant's admission in view of Kornely et al., U.S. Patent No. 4,508,768 ("Kornely"). Claim 17 was also rejected under 35 U.S.C. §103(a) as being unpatentable over Kroeter, U.S. Patent No. 23,930 ("Kroeter") in view of Kornely.

With this Response, claims 1, 3, 6-10, 12-14, and 17 have been amended. Claims 11 and 18 have been canceled. Claims 19-26 have been added. Claims 1-10, 12-17, and 19-26 are pending in the application and are presented for consideration and allowance.

35 U.S.C. §101 Rejections

Claims 1-9 and 12-14 were provisionally rejected under 35 U.S.C. §101 as claiming the same invention as co-pending U.S. Pat. Appln. No. 10/433,537. However, a Preliminary Amendment has been filed for U.S. Pat. Appln. No. 10/433,537 canceling the apparatus claims 1-14. A courtesy copy of the Preliminary Amendment filed June 4, 2004 is included with this Response.

Based upon the above, it is respectfully submitted that claims 1-9 and 12-14 are not co-extensive in scope with the claims of co-pending U.S. Pat. Appln. No. 10/433,537. It is

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respectfully requested that the statutory double patenting rejection of claims 1-9 and 12-14 be withdrawn.

35 U.S.C. §103 Rejections

Claims 1-6 and 11-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Declaration of Matthew Lorence filed March 12, 2002 in view of Hale. Claim 11 has been canceled. Independent claim 1 has been amended to recite: "A baking pan comprising a first surface defining at least a first row of receptacles and a second row of receptacles; a wall extending from the first surface and terminating in a pan perimeter; and a stacking feature defined by a position of the second row of receptacles relative to the pan perimeter such that a distance between a first receptacle in the second row and a nearest pan perimeter is less than a distance between a last receptacle in the second row and a respective nearest pan perimeter."

Hale teaches a square tray 10 including a base 11 and four sides labeled north, south, east, and west. Recessed seats 20, 21, 22, and 23 are provided on top of the tray 10 that interact with offset portions 30, 31, 32, and 33 provided at the corners of the tray 10. In addition, a north-south partition 24 bisects the tray 10, terminating in a finger grip portion 47. A quarter-turn of one tray 10 relative to another tray 10 permits the trays 10 to stack as the offset portions 30, 31, 32, and 33 contact respective ones of the recessed seats 20, 21, 22, and 23. Alternately, aligned trays 10 nest. Hale at column 1, line 50 to column 2, line 31.

In contrast, the pan of claim 1 includes a stacking feature defined by a position of the second row of receptacles relative to the pan perimeter such that a first receptacle in the second row is closer to the nearest pan perimeter than a last receptacle in the second row is to a respective nearest pan perimeter. It is respectfully submitted that Hale does not teach or suggest at least the limitation of a stacking feature defined by a position of the second row of receptacles relative to the pan perimeter, as otherwise required by independent claim 1. Consequently, it is respectfully submitted that claims 1-6 and 12 are not obvious over the cited references, recite patentable subject matter, and are in condition for allowance. It is respectfully requested that the rejections of claims 1-6, and 11-12 be withdrawn.

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Claims 1-4, 6, and 8-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schwartz. Schwartz teaches a compartmented stacking and nesting container having a top wall 10, compartments 12, 14, 16, and 18, and a peripheral side wall 20. Schwartz teaches at column 3, lines 19-22 that the walls 12a, 14a, 16a, and 18a of the compartments 12, 14, 16, and 18 are “**in all instances**, of appropriate direction to permit ready nesting” of the containers. In addition, the peripheral side wall 20 is corrugated to include outward corrugations 28 and inward corrugations 30. The corrugations 28, 30 undulate along both sides and both ends, and are geometrically arranged to permit stacking of the containers. Schwartz at column 3, lines 31-58. To this end, the compartments 12, 14, 16, and 18 taught in Schwartz always align such that the containers nest when the corrugations 28, 30 of two containers are aligned, and stack when the corrugations 28, 30 are misaligned. In other words, the stacked and nested relationship is achieved solely by the corrugations 28, 30 and not by an arrangement of the compartments. This is clearly seen by a comparison of FIG. 5 (nested) and FIG. 6 (stacked); in both orientations, the compartments of the top and bottom containers are aligned.

Independent claim 1 has been amended as noted above. It is respectfully submitted that Schwartz does not teach or suggest at least the limitation of a stacking feature defined by a position of the second row of receptacles relative to the pan perimeter, as otherwise recited in claim 1. Consequently, it is submitted that amended independent claim 1 recites patentable subject matter, is nonobvious, and is in condition for allowance. In addition, claims 2-4, 6, and 8-15 depend directly or indirectly from independent claim 1, such that these claims are also nonobvious. Thus, it is respectfully submitted that all of claims 1-4, 6, and 8-15 recite patentable subject matter and are in condition for allowance. It is respectfully requested that the rejection to these claims with withdrawn.

Claim 16 was rejected under 35 U.S.C. §103(a) as being unpatentable over Schwartz as applied above, and further in view of Lau. Claim 16 depends from amended independent claim 1. As previously described, amended claim 1 is patentable over Schwartz. As such, claim 16 is similarly allowable.

Claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over the Matthew Lorence Declaration in view of Kornely. Kornely teaches a liner 10 positioned between

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rectangular cake pans 15 (FIGS. 1-3) and round cake pans (FIG. 4). Kornely teaches conventional nesting of the pans 15 with the liner 10 positioned between adjacent pans 15.

In contrast, amended independent claim 17 recites: "A set of pans comprising a first pan and a second pan, each of the first pan and the second pan comprising a first surface defining at least a first row of receptacles and a second row of receptacles; a wall extending from the first surface and terminating in a pan perimeter; a stacking feature defined by a position of the second row of receptacles relative to the pan perimeter such that a distance between a first receptacle in the second row and a nearest pan perimeter is less than a distance between a last receptacle in the second row and a respective nearest pan perimeter; and a liner." It is respectfully submitted that the cited references do not teach or suggest at least the limitation of a stacking feature defined by a position of the second row of receptacles relative to the pan perimeter, as otherwise recited by amended claim 17. For this reason, it is respectfully submitted that claim 17 recites patentable subject matter and is in condition for allowance. In light of this, it is respectfully requested that the rejection to claim 17 be withdrawn.

In addition, claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kroeter in view of Kornely. Kroeter teaches a plate 1 provided with a series of radially spaced depressions 4 disposed circumferentially about the round plate 1. It is respectfully submitted that no motivation exists to combine the teachings of Kroeter and Kornely. However, even if such a purported combination is made, it is respectfully submitted that the combination does not teach or suggest a stacking feature defined by a position of the second row of receptacles relative to the pan perimeter, as otherwise recited by amended claim 17. For these reasons, it is respectfully submitted that claim 17 recites patentable subject matter and is in condition for allowance. In light of this, it is respectfully requested that the rejection to claim 17 over Kroeter in view of Kornely be withdrawn.

Claims 19-26 have been added to more particularly point out and distinctly claim subject matter of the pending invention. It is believed that claims 19-26 are fully supported by the Specification and Drawings as originally filed, recite patentable subject matter, and are in condition for allowance.

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CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 1-10, 12-17, and 19-26 are in proper form for allowance, and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections, and allowance of claims 1-10, 12-17, and 19-26, is respectfully requested.

Twenty-four claims are pending, including two independent claims. Therefore, it is believed that fees are required under 37 C.F.R. 1.16(b)(c) as indicated on the Transmittal Sheet. The Patent Office is hereby authorized to charge Deposit Account No. 50-0471 for any required fees.

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The Examiner is invited to telephone the Applicants' representative at the below-listed number to facilitate prosecution of this application.

Respectfully submitted,

William E. Sloan et al.,

By their attorneys,

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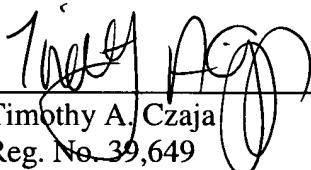
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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 3rd day of September, 2004.

By 

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